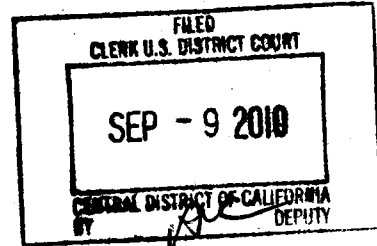


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COURTESY COPY



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEVEN E. PLAT, an individual,

Plaintiff,

Case No.: CV10-5868 SVW (CWx)

[Honorable Stephen W. Wilson]

vs.

ORDER GRANTING REMAND

THE NORTHWESTERN MUTAL
INSURANCE COMPANY, a mutual
company; SHARON ANN
THOMPSON, an individual; HOOPER
HOLMES, INC., dba PORTAMEDIC, a
corporation; KAREN HAWKINS, R.N.
an individual,

Defendants.

Priority _____
Send _____
Enter _____
Closed _____
JS-5/JS-6
JS-2/JS-3 _____
Scan Only _____

This action was timely removed to this Court by defendant Northwestern Mutual Life Insurance Company ("Northwestern Mutual") on August 5, 2010, from the Superior Court of California for the County of Los Angeles. Northwestern Mutual invokes federal jurisdiction based on diversity of citizenship,

1 28 U.S.C. § 1332. But one of the defendants, Sharon Ann Thompson, is or may be
2 a citizen of the State of California. (Removal Notice at para. 5.)

3 Northwestern Mutual contends that Thompson is a sham defendant, because
4 she is alleged to be an insurance agent whose principal was disclosed. It contends
5 that in that circumstance, California law does not permit an insured to maintain any
6 action against the agent for negligence, citing *Good v. Prudential Ins. Co. of*
7 *America*, 5 F.Supp.2d 804,807-808 (N.D. Cal.1998), and *Lippert v. Bailey*,
8 241 Cal.App.2d 376, 382, 50 Cal.Rptr. 478 (1966).

9 But California law does not universally bar all negligence claims by insureds
10 against insurance agents. An agent who holds herself out as an expert, and who
11 negligently advises her client about some aspect of coverage, can be held liable.
12 *Paper Savers, Inc. v. Nacsa*, 51 Cal.App.4th 1090, 59 Cal.Rptr.2d 547(1996);
13 *Clement v. Smith*, 16 Cal.App.4th 39, 45, 19 Cal.Rptr.2d 676 (1993); *Butcher v.*
14 *Truck Ins. Exchange*, 77 Cal.App.4th 1442, 1463, 92 Cal. Rptr.2d 521 (2000); and
15 ~~*Fitzpatrick v. Hayes*, 57 Cal.App.4th 916, 928, 67 Cal.Rptr.2d 445 (1997).~~

16 Based on this line of authority, other federal courts have remanded actions
17 against insurance companies in which an agent whose citizenship destroyed
18 complete diversity was also named as a party. *See, e.g., Bros. v. Fortis Ins. Co.*,
19 2004 WL 1810568 (N.D. Cal. 2004)(granting motion to remand because of
20 potential liability of agent); *Sun v. Equitable Life Assur. Soc. of the U.S.*, 2001
21 WL 764486 (N.D. Cal. 2001)(same); *Levine v. Allmerica Financial Life Ins. &*
22 *Annuity Co.*, 41 F.Supp.2d 1077 (C.D. Cal. 1999) (same); and *Smith v. New*
23 *England Mutual Life Ins. Co.*, 1998 WL 775124 (N.D. Cal. 1998)(same).

24

25

26


27

28

1 This Court cannot find that Thompson is immune from liability on the facts
2 alleged, and that this Court can therefore ignore her citizenship because she is a
3 sham defendant. Accordingly, Plat's ex parte application for remand is
4 GRANTED.

5 IT IS SO ORDERED.

6 Dated:
7 9/8/10



Hon. Stephen V. Wilson
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28